

1 Michael J. McMahon, WSBA #6895  
2 Ronald A. Van Wert, WSBA #32050  
3 Andrew M. Wagley, WSBA #50007  
4 ETTER, M<sup>C</sup>MAHON, LAMBERSON,  
5 VAN WERT & ORESKOVICH, P.C.  
6 618 West Riverside Avenue, Suite 210  
7 Spokane, WA 99201  
8 Phone: (509) 747-9100  
9 Facsimile: (509) 623-1439  
10 Attorneys for Defendant

11  
12 THE HONORABLE SALVADOR MENDOZA, JR.

13  
14 UNITED STATES DISTRICT COURT  
15 FOR THE EASTERN DISTRICT OF WASHINGTON

16 MARILYN M. PROCTER AND  
17 STEVE PROCTER AS TRUSTEE  
18 FOR SPECIAL NEEDS TRUST OF  
19 MARILYN M. PROCTER,

20 Plaintiffs,  
21  
22 v.  
23  
24 RIVERVIEW LUTHERAN  
25 RETIREMENT COMMUNITY OF  
26 SPOKANE,  
27 Defendant.

28

---

29 No. 4:17-cv-05113-SMJ  
30  
31 ANSWER

32  
33 Defendant RIVERVIEW LUTHERAN RETIREMENT COMMUNITY OF  
34 SPOKANE, PCB (“Riverview”) answers the Complaint as follows:

## I. PARTIES<sup>1</sup>

1. Riverview lacks knowledge or information sufficient to form a belief about the truth of the allegation that Plaintiff Marilyn Procter currently resides in Walla Walla County, Washington, and therefore denies the same. Riverview admits that Marilyn Procter formerly resided at Riverview.
2. Riverview lacks knowledge or information sufficient to form a belief about the truth of the allegations that Steve Procter currently resides in Walla Walla County, Washington, that the referenced Power of Attorney is valid, and that the Special Needs Trust for Marilyn Procter is valid, and therefore denies the same. Riverview admits that Steve Procter is Marilyn Procter's brother.
3. Admit.

## II. JURISDICTION AND VENUE

4. Admit.
5. Riverview admits that Venue is appropriate in the United States District Court for the Eastern District of Washington. Riverview denies that any discriminatory or unlawful practices occurred.

<sup>1</sup> For ease of reference, Riverview mirrors the numbering of the Complaint.

### III. FACTS

6. Riverview lacks knowledge or information sufficient to form a belief about the truth of the allegations contained within ¶ 6, and therefore denies the same.
7. Riverview admits that Marilyn Procter lived in the Riverview Village Independent Living portion of the campus, and that increased levels of services are provided by the Riverview Terrace Assisted Living Facility and the Riverview Rehabilitation and Acute Care Center. Riverview lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in ¶ 7, and therefore denies the same.
8. Riverview admits that in 2004, Steve Procter signed a “Residency Agreement” purportedly on behalf of the Special Needs Trust of Marilyn Procter. Riverview admits that this Residency Agreement required an accommodation fee and monthly fee. Paragraph 8 references information contained on <http://riverviewretirement.org/independent-living/faqs>; the website speaks for itself, as it provides the whole message and places the selective terms in context. Riverview denies the remainder of ¶ 8.
9. Riverview admits the allegations contained within ¶ 9, except that the

1 Residency Agreement provides that the redecoration will be provided “as  
2 needed and determined by the VILLAGE” and the availability of the  
3 common areas was “as detailed in the House Rules/Guide.”  
4

5 10. Admit.  
6

7 11. Riverview admits the allegations contained within ¶ 11, except that it lacks  
8 knowledge of information sufficient to form a belief about the truth of the  
9 allegation regarding the alleged expected transition of Marilyn Procter and  
10 therefore denies the same.  
11

12. Deny.  
13

14 13. Riverview denies that Mike Drew “informed [Steve] Procter that [Marilyn]  
15 Procter could not move to the Terrace assisted living apartment because  
16 ‘she was disabled,’” but admits the remainder of the allegations in ¶ 13.  
17

18 14. Riverview admits that a meeting occurred between Charley Tirrell and  
19 Steve Procter in January 2015. Riverview denies the remainder of ¶ 14.  
20

21 15. Riverview admits the allegations contained within ¶ 15, except that  
22 Riverview denies that Marilyn Procter “recovered the majority of her  
23 functionality,” that no health care professional “expressed concern for her  
24 safety or indicate[d] any questions regarding [Marilyn] Procter’s ability to  
25

1 live on her own,” and that “the only limitation she was subjected to was she  
2 relinquished her driver’s license.”  
3

4

5 16. Riverview denies the allegations contained within ¶ 16, except that the  
6 March 2015 meeting occurred and Steve Procter was told that Marilyn  
7 Procter was not eligible to live in the Terrace Assisted Living Facility.  
8

9 17. Riverview denies the allegations contained in ¶ 17, except that Steve  
10 Procter sent Charley Tirrell a letter in March 2015. The letter speaks for  
11 itself.  
12

13 18. Riverview denies the allegations contained within ¶ 18, except that in May  
14 2015, it contacted Steve Procter and requested that Marilyn Procter be  
15 accompanied by a caregiver during an upcoming residents’ outing.  
16 Riverview admits that it later requested that Marilyn Procter have a  
17 chaperon or caregiver at all outings. Riverview lacks knowledge or  
18 information sufficient to form a belief about the truth of the allegations  
19 regarding Steve Procter’s or Marilyn Procter’s feelings or beliefs, and  
20 therefore denies the same.  
21

22 19. Riverview generally denies ¶ 19 based upon its argumentative nature.  
23  
24 Riverview admits that in June 2015, its staff documented Marilyn Procter’s  
25  
26  
27  
28  
29  
30  
31  
32

1       concerning behavior. These documents speak for themselves. Riverview  
2       lacks knowledge or information sufficient to form a belief about any of  
3       Marilyn Procter's feelings, thoughts, or knowledge stated in ¶ 19, and  
4       therefore denies the same.  
5  
6

7  
8       20. Riverview denies the allegations contained in ¶ 20, except that Charley  
9       Tirrell wrote Steve Procter a letter dated June 29, 2015. This letter speaks  
10       for itself. Riverview also admits that on August 14, 2015, a meeting  
11       occurred between Charley Tirrell and Steve Procter where Charley Tirrell  
12       presented Steve Procter with an Acknowledge of Advisement; Hold  
13       Harmless document. This document speaks for itself.  
14  
15

16       21. Deny.  
17  
18

19       22. Riverview denies that "Ms. Procter was forced to leave the community she  
20       had made her home." Riverview lacks knowledge or information sufficient  
21       to form a belief about the truth of the remaining allegations in ¶ 22, and  
22       therefore denies the same.  
23  
24

25       23. Riverview lacks knowledge or information sufficient to form a belief about  
26       the truth of the allegations in ¶ 23, and therefore denies the same.  
27  
28

29       31       //  
30       32

#### **IV. CAUSES OF ACTION**

## **A. Count One – Violation of the Fair Housing Act**

24. The denials and admissions listed above are incorporated herein by reference.
25. Paragraph 25 purports to be a statement of law for which no response is necessary. If a response is necessary, the allegations contained in ¶ 25 are denied.
26. Deny.
27. Deny.
28. Deny.
29. Deny.

**B. Count Two - Violation of the Americans with Disabilities Act of 1990  
and the Washington Law Against Discrimination**

30. The denials and admissions listed above are incorporated herein by reference.
31. Paragraph 31 purports to be a statement of law for which no response is necessary. If a response is necessary, the allegations contained in ¶ 31 are denied.
32. Paragraph 32 purports to be a statement of law for which no response is

1 necessary. If a response is necessary, the allegations contained in ¶ 32 are  
2 denied.  
3

4 33. Paragraph 33 purports to be a statement of law for which no response is  
5 necessary. If a response is necessary, the allegations contained in ¶ 33 are  
6 denied.  
7

8 34. Deny.  
9

10 35. Deny.  
11

12 **C. Count Three – Violation of the Washington Consumer Protection Act**  
13

14 36. The denials and admissions listed above are incorporated herein by  
15 reference.  
16

17 37. Deny.  
18

19 38. Deny.  
20

21 39. Deny.  
22

23 **D. Count Four – Breach of Contract**  
24

25 40. The denials and admissions listed above are incorporated herein by  
26 reference.  
27

28 41. Admit, except that the specific Residency Agreement for the Special Needs  
29 Trust of Marilyn Procter may be unenforceable if the Special Needs Trust  
30  
31  
32

of Marilyn Procter is invalid.

42. Deny.

43. Deny.

44. Deny.

## **E. Count Five – Negligent Infliction of Emotional Distress**

45. The denials and admissions listed above are incorporated herein by reference.

## 46. Deny.

47. Deny.

48. Deny.

## **F. Count Six – Violation of Laws Regarding Assisted Living Facilities**

49. The denials and admissions listed above are incorporated herein by reference

50. Paragraph 50 purports to be a statement of law for which no response is necessary. If a response is necessary, the allegations contained in ¶ 50 are denied.

51. Paragraph 51 purports to be a statement of law for which no response is necessary. If a response is necessary, the allegations contained in ¶ 51 are

denied.

52. Deny.

#### IV. [Sic] DAMAGES

53. Deny.

## **V. REQUEST FOR INJUNCTIVE RELIEF**

54. Deny.

## VI. JURY DEMAND

55. Riverview agrees that a jury is appropriate.

## VII. PRAYER

56. Riverview denies that Plaintiffs are entitled to any of the relief requested herein.

Allegations not specifically admitted or denied above are denied.

## SPECIFIC DENIALS

Pursuant to Fed. R. Civ. P. 9(a)(2), Riverview hereby asserts the following SPECIFIC DENIALS:

1. Marilyn Procter lacks the capacity to sue. Upon information and belief, Marilyn Procter is incompetent and has been diagnosed with developmental delay and the cognitive function of a 13-year old.

1 2. Steve Procter lacks the capacity to sue as Power of Attorney for Marilyn  
2  
3 Procter. Upon information and belief, the Power of Attorney for Marilyn  
4  
5 Procter is invalid as she lacked the capacity to enter into such an  
6 agreement. Further, upon information and belief, the Power of Attorney  
7 does not authorize Marilyn Procter's attorney-in-fact to maintain suit on  
8 her behalf.

9  
10 3. Steve Procter lacks the capacity to sue as Trustee of the Special Needs  
11  
12 Trust of Marilyn Procter. Upon information and belief, the Special Needs  
13  
14 Trust does not authorize Steve Procter to act on Marilyn Procter's behalf or  
15 invoke her personal rights. Further, upon information and belief, the  
16 Special Needs Trust, purportedly funded by Marilyn Procter's brother, is  
17 invalid as it fails its essential purpose of excluding the value of the trust  
18 property from the calculation of Marilyn Procter's eligibility for public  
19 benefits.

20  
21  
22  
23  
24  
25

26 **AFFIRMATIVE DEFENSES**  
27

28 Defendant hereby asserts the following AFFIRMATIVE DEFENSES:  
29

30 1. Plaintiffs fail to state a claim upon which relief may be granted.  
31  
32 2. As the Special Needs Trust of Marilyn Procter is invalid, Steve Procter

1       lacks standing to seek relief on behalf of the Special Needs Trust.  
2

3. Plaintiffs' claims are barred because any action of Riverview was taken for  
4       legitimate, non-discriminatory reasons.  
5

6. All acts, rules, policies, and/or practices of Riverview were reasonable and  
7       in compliance with the law.  
8

9. Marilyn Procter did not meet the essential eligibility requirements for the  
10      Riverview Terrace Assisted Living Facility.  
11

12. No reasonable accommodations or modifications to the eligibility  
13      requirements existed to enable Marilyn Procter to meet the essential  
14      requirements of residency in the Riverview Terrace Assisted Living  
15      Facility as Riverview would have to fundamentally alter the services it  
16      provided and/or suffer undue burden. WAC 388-78A-2020 (definition of  
17      “reasonable accommodation”); WAC 388-78A-2200; WAC 388-78A-  
18      2490; WAC 388-78A-2710; WAC 388-78A-2474.  
19

20. Riverview made a good-faith effort to identify and provide a reasonable  
21      accommodation to Marilyn Procter.  
22

23. Any acts or practices of Riverview did not have the capacity to deceive a  
24      substantial portion of the public and were not intended to deceive.  
25

26

27

28

29

30

31

32

1 9. All acts and practice of Riverview were reasonable in relation to the  
2 development and preservation of Riverview's business and/or were not  
3 injurious to the public interest.  
4  
5 10. Plaintiffs have not suffered, nor plead, objective physical symptomatology  
6 associated with the alleged emotional distress.  
7  
8 11. If Plaintiffs sustained any damage or injury as alleged in the Complaint, the  
9 same was not caused by any fault of Riverview but was proximately caused  
10 by Plaintiffs' own contributory/comparative fault.  
11  
12 12. If Plaintiffs sustained any damage or injury as alleged in the Complaint, the  
13 same was not due to any act or omission by or on the part of Riverview, but  
14 was due to the failure of Plaintiffs to mitigate such damage or injury.  
15  
16 13. Plaintiffs are estopped, by reason of their own conduct and actions, from  
17 asserting the alleged claims herein.  
18  
19 14. Plaintiffs have waived the right, by reason of their own conduct and action,  
20 to assert the alleged claims herein.  
21  
22

23 **DEFENDANTS' PRAYER FOR RELIEF**  
24  
25

26 WHEREFORE, having fully answered the Complaint and having filed its  
27 Specific Denials and Affirmative Defenses, Riverview prays for the following  
28  
29  
30  
31  
32

1 relief:

2

3 1. An Order dismissing the Complaint with prejudice.

4

5 2. An Order awarding Riverview its costs and reasonable attorney's fees as

6 allowed by law.

7

8 3. For such other and further relief as law and equity allow.

9

10

11

12 DATED this 25th day of September, 2017.

13

14 By: /s/ Andrew M. Wagley

15 Michael J. M<sup>c</sup>Mahon, WSBA #6895  
16 Ronald A. Van Wert, WSBA #32050  
17 Andrew M. Wagley, WSBA #50007  
18 ETTER, M<sup>c</sup>MAHON, LAMBERSON,  
19 VAN WERT & ORESKOVICH, P.C.  
20 618 West Riverside Avenue, Suite 210  
21 Spokane, WA 99201  
22 Phone: (509) 747-9100  
23 Facsimile: (509) 623-1439  
24 Email: [mjm13@ettermcmahon.com](mailto:mjm13@ettermcmahon.com)  
25 Email: [rvw@ettermcmahon.com](mailto:rvw@ettermcmahon.com)  
26 Email: [awagley@ettermcmahon.com](mailto:awagley@ettermcmahon.com)  
27 Attorneys for Defendant  
28  
29  
30  
31  
32

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2017, I electronically filed the following document:

## ANSWER

with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Michael D. Whipple  
The Whipple Law Group, PLLC  
905 W. Riverside Ave., Ste. 607  
Spokane, WA 99201  
whipple@whiplawgroup.com

DATED this 25th day of September, 2017.

By: /s/ Kristie Miller  
Kristie Miller